

EXHIBIT 5

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User Agreement

Last updated: March 4, 2022

Welcome to Gemini!

Welcome! Thanks for visiting Gemini, a digital asset platform operated by and proprietary to Gemini Trust Company, LLC, a New York trust company (d/b/a Gemini Exchange, LLC in AZ, CA, DE, FL, HI, ID, IL, KS, MA, MI, MN, NC, ND, NM, OH, OR, SD, UT, and VA; d/b/a Gemini Exchange in AK and WA). You agree and understand that by signing up to Gemini and opening an account, you are agreeing to enter into this user agreement (the “User Agreement”) by and between you and Gemini Trust Company, LLC, and be legally bound by its terms and conditions, so please read them carefully. Please also note that there may be specific terms or conditions applicable to you as a user in a given jurisdiction, as detailed herein. If any term or condition of this User Agreement is unacceptable to you, please do not visit, access, or use Gemini. Use of the words “we,” “us,” or “our” in this User Agreement refers to Gemini Trust Company, LLC and any or all of its affiliates.

Using our services

By signing up to Gemini and opening an account, you represent and affirm that you are at least 18 years old, have the legal capacity to enter into this User Agreement by and between you and Gemini Trust Company, LLC, and agree to be legally bound by the terms and conditions of this User Agreement in their entirety.

You agree and understand that by logging into your account or authenticating to our application programming interface (“API”) with your API key (“API Authenticating” or “API Authentication”) following any change to this User Agreement, your login or API Authentication, as applicable, shall constitute your agreement to the amended User Agreement by and between you and Gemini Trust Company, LLC, and you agree to be legally bound by its terms and conditions as amended. Among other things, this means that, if you log into your account or API Authenticate following an amendment to this User Agreement, transactions that you or others have already undertaken, and benefits, such as trading fee discounts and rebates that you or others have earned, could be affected by the

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require your affirmative assent and continuing acceptance of this User Agreement, from time to time, as a condition of you accessing or using any Gemini Services (as defined below), logging into your account, or API Authenticating, as applicable. If you do not agree to be bound by this User Agreement, you should not access or use any Gemini Services, login to your account, or API Authenticate. Should you disagree to this User Agreement (including any changes or amendments), please close your account in accordance with the Account Closure section.

In order to use Gemini and the Gemini Services, you must first successfully provide the required identification information pursuant to our Bank Secrecy Act ("BSA") and Anti-Money Laundering ("AML") Compliance Program (collectively, our "BSA/AML Program").

Please note that the section on Dispute Resolution contains an arbitration clause and class action waiver. By agreeing to this User Agreement, you agree to resolve all disputes through binding individual arbitration, which means that you waive any right to have the dispute decided by a judge or jury, and you waive any right to participate in collective action, whether that be a class action, class arbitration, or representative action.

Feel free to print and keep a copy of this User Agreement, but please understand that we reserve the right to change any of these terms and conditions at any time. But don't worry, you can always find the latest version of this User Agreement here on this page.

Applicable Laws and Regulations

Your conduct on Gemini is subject to the laws, regulations, and rules of any applicable governmental or regulatory authority (the "Applicable Laws and Regulations") including, but not limited to:

- Money Service Business ("MSB") regulations under the Financial Crimes Enforcement Network ("FinCEN");
- State money transmission laws;
- Laws, regulations, and rules of relevant tax authorities;
- Applicable regulations and guidance set forth by FinCEN;
- The Bank Secrecy Act of 1970 ("BSA");

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regulations regarding AML/CTF;

- Issuances from the Office of Foreign Assets Control (“OFAC”);
- The New York Banking Law (the “NYBL”);
- Regulations promulgated by the New York Department of Financial Services (“NYDFS”) from time to time.
- The National Futures Association (“NFA”);
- The Financial Industry Regulatory Authority (“FINRA”); and
- The Commodity Exchange Act (“CEA”).

You unequivocally agree and understand that by signing up to Gemini and opening an account and using Gemini in any capacity, you agree and understand to act in compliance with and be legally bound by this User Agreement as well as the Applicable Laws and Regulations. For the avoidance of doubt, the receipt of all trading fee discounts and rebates and continued use of your account is conditioned on continued adherence at all times to this User Agreement and all Applicable Laws and Regulations.

Digital Assets

As used herein, “Digital Asset” means a digital asset (also called a “cryptocurrency,” “virtual currency,” “digital currency,” or “virtual commodity”), such as bitcoin or ether, which is a digital representation of value based on (or built on top of) a cryptographic protocol of a computer network.

Your Gemini Account

Account Opening

Only individuals or institutions that have opened an account (“Gemini Account”) and successfully completed our BSA/AML Program are considered Gemini customers (each, a “Gemini Customer”). If you would like to provide access to your Gemini Account to another individual or institution, this individual or institution must register a user account (“User Account”) to your Gemini Account and successfully complete our BSA/AML Program. **You agree that you will not allow any persons who have not successfully completed our**

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institution by a beneficial owner and/or designated representative of the said institution. By doing so, you warrant and agree that you are a beneficial owner and/or designated representative of the said institution. You hereby authorize us, or a third-party service provider, to take any measures that we consider necessary to verify and authenticate your identity, confirm the information you submit about your linked bank account, and to take any action we deem necessary based on the results. To the extent that you would like more information on completing our BSA/AML Program, or adding another person to your account, please email compliance@gemini.com.

Account Types

In order to access Gemini, you must register and open a Gemini Account. Each Gemini Account has the following subaccounts:

- One or more associated User Accounts;
- A fiat currency account ("Fiat Account") that reflects its fiat currency balance; and
- A Digital Asset account ("Digital Asset Account") that reflects its Digitals Asset balance. Each Digital Asset Account is subdivided into a depository account ("Depository Account") and a custody account ("Custody Account").

For information on Gemini's custody services ("Custody Services"), please see our Custody Services page here:

<https://gemini.com/custody>

Access to your Gemini Account is limited solely to the individuals who have successfully registered and opened an associated User Account. **You agree that you will not grant any person access to your User Account, except as described herein, as granting access may violate Applicable Laws and Regulations.**

Account Access

You are only permitted to access your Gemini Account using your User Account login credentials and other required forms of authentication. We require multi-factor authentication to keep your User Account safe and secure. As a result, **you are required to use at least two forms of authentication when accessing your User Account and performing certain operations in your Gemini Account.** Forms of multi-factor authentication in addition to your login credentials may include verification tokens delivered through short message service ("SMS") or a specified and supported two-factor

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(Android) or "jailbroken" (iOS) device. We reserve the right in our sole discretion to prohibit access from or by any device on which the operating system has been or is suspected of having been modified or tampered with. You agree that we may provide your 2FA data to a third-party service provider in order to help us authenticate you.

You agree that your User Account login credentials and any other required forms of authentication, where applicable, have been chosen by you, when applicable. You also agree to keep your User Account login credentials and any other required forms of authentication, including your API keys, confidential and separate from each other, as well as separate from any other information or documents relating to your Gemini Account and your User Account.

You agree and understand that your disclosure of login information to third parties may negate our user authentication measures and allow unauthorized access to your account. You agree that we cannot be held liable for unauthorized access or other loss resulting from your disclosure or other transmission, whether intentional or inadvertent, of your login information to third parties.

You agree and understand that you are solely responsible (and you will not hold us responsible) for managing and maintaining the security of your User Account login credentials and any other required forms of authentication, including your API keys. You further agree and understand that, we are not responsible (and you will not hold us responsible) for any unauthorized access to or use of your User Account and/or your Gemini Account.

You agree and understand that you are responsible for monitoring your User Account and Gemini Account. If you notice any unauthorized or suspicious activity in your account, including any potential ransomware payments or transactions that may involve Sanctioned Persons, please email support@gemini.com or fraud@gemini.com and notify us immediately.

Account Communication

You agree and understand that all communication with you will be via email. We will use the email address on record for your User Account as our primary means of communicating with you. You acknowledge and understand that this is the only authorized way to contact us. Third parties may advertise or publish alternative ways to contact us or use other measures to pose as Gemini. We cannot verify the authenticity of any such alternative contacts, and they pose a risk of fraud and other malfeasance, so we strongly recommend you do not attempt to contact us using these methods. You agree that we cannot be held liable for unauthorized access to your account or other loss resulting from

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record is considered valid. If any email communication is returned as undeliverable, we retain the right to block your access to Gemini until you provide and confirm a new and valid email address.

Account History

Your transaction history ("Transaction History") is always available on Gemini. Your Transaction History contains all of your trading activity, including pending transactions, deposits and withdrawals, as well as your Fiat Account and Digital Asset Account balances; however, please note that nothing in your Transaction History should be treated as a valuation.

We use commercially reasonable efforts to assure that the information contained in the notices we send you and your Transaction History is accurate and reliable; however, please understand that errors may sometimes occur and such errors do not impact the actual means and results of a given transaction.

Any transaction listed in your Transaction History or other communication including, but not limited to, receipts sent to your email on record shall be deemed and treated as authorized and correct, approved, and confirmed by you unless we receive Written Notice (as defined herein) to the contrary within three calendar days from the date the communication was sent.

Account Review and Acknowledgment

It is important for you to understand that it is your sole responsibility to review your Transaction History and any notices. You also understand that for the purposes of review and acknowledgment, you agree to be deemed to have reviewed your Transaction History and all notices **on at least a monthly basis**. If for any reason you are unable to do so, or you do not receive our communications, it is your responsibility to visit our [Help Center](#) and notify us immediately.

You understand that every communication sent to your email on record will be deemed to have been acknowledged as correct, approved, and confirmed by you unless we have received Written Notice to the contrary within three calendar days from the date the communication was sent.

We retain the right to make changes or adjustments to your Fiat Account and/or Digital Asset Account as necessary and appropriate, and in our sole discretion, to comply with any Applicable Laws and Regulations or to ensure market integrity. Please see the 'Erroneous Orders' and 'Erroneous Trades' sections for more information.

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closure. You may be required to either cancel or complete all open orders and, in accordance with the provisions of this User Agreement, provide transfer instructions of where to transfer any fiat currency and/or Digital Assets remaining in your account. You are responsible for any fees, costs, expenses, charges, or obligations (including, but not limited to, attorney and court fees or transfer costs of fiat currency or Digital Assets) associated with the closing of your account. In the event that the costs of closing of your account exceed the value in your account, you will be responsible for reimbursing us. You may not close any of your accounts to avoid paying any fees otherwise due or to avoid any examination related to our BSA/AML Program.

Account Suspension

You agree and understand that we have the right to immediately (i) suspend your account and all accounts beneficially owned by you and any members of your household or for which you are a representative or authorized signatory and, in the case of entities, any affiliates (each, a “Related Account”), (ii) freeze/lock the funds and assets in all such accounts, and (iii) suspend your access to Gemini, until a determination has been made, if we suspect, in our sole discretion, you and/or any such accounts to be in violation of:

- Any provision of this User Agreement;
- Any Applicable Laws or Regulations;
- Our BSA/AML Program; or
- Our Marketplace Conduct Rules,

at any time since the opening of such account or Related Account (each, a “Conduct Violation”).

You further agree and understand that we have the right to immediately (i) suspend your account and any Related Account, (ii) freeze/lock the funds and assets in all such accounts and seek to recover additional funds in the event that the funds and assets in your accounts are insufficient to cover Gemini’s losses, and (iii) suspend your access to Gemini until a determination has been made, if:

- We are required to do so by a regulatory authority, court order, facially valid subpoena, or binding order of a government authority;

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- The account has a negative balance for any reason;
- The account has a balance that needs to be reconciled for any reason;
- Your ACH deposit was returned to your bank;
- We believe someone is attempting to gain unauthorized access to the account;
- We believe there is unusual activity in the account;
- We believe your account was used to send or receive a ransomware payment;
- We believe you are using Gemini, your login credentials, or other account information in an unauthorized or inappropriate manner;
- The account is being accessed from a jurisdiction where we do not offer Gemini services; or
- The account has not been accessed in two years or more.

If your account has been suspended, you will be notified when accessing Gemini. We may, in our sole discretion, give Written Notice that your account has been suspended and may, in our sole discretion, disclose the reasons for suspension, if permitted to do so by law.

Account Investigations

You agree and understand that we have the right to immediately investigate your account and any Related Account, if we suspect, in our sole discretion, that you and/or any such account has committed a Conduct Violation or otherwise been engaged in Prohibited Use or suspicious activity.

You further agree and understand that we have the right to immediately investigate your account and any Related Account, if:

- We are required to do so by a regulatory authority, court order, facially valid subpoena, or binding order of a government authority;
- The account is, or is related to any account that is, subject to any pending litigation, investigation, or governmental proceeding;

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- The account has not been accessed in two years or more.

We may, in our sole discretion, give Written Notice that your account is the subject of an investigation and may, in our sole discretion, share the general nature of the investigation, if permitted to do so by law.

If we suspect that an account has committed a Conduct Violation that pertains to our Marketplace Conduct Rules, we will give Written Notice and share the general nature of the allegations as well as the specific provisions of our Marketplace Conduct Rules that appear to have been violated. You will have the right to submit, within seven calendar days from the date of notification, a written statement to our Chief Compliance Officer ("CCO") explaining why no disciplinary action should be taken.

You agree and understand that upon our request and within the time frame designated by us, you and any related party are obligated to respond to any interrogatories in writing and to furnish any documentary materials and other information in connection with any investigation initiated pursuant to this User Agreement. You agree and understand that neither you nor any related party shall impede or delay any investigation or proceeding conducted pursuant to this User Agreement, nor refuse to comply with any request made pursuant to this User Agreement.

Following the conclusion of an investigation, our CCO will make, in his or her sole discretion, a determination based upon the weight of the evidence. If a suspected Conduct Violation pertains to our Marketplace Conduct Rules, our CCO may consider a variety of factors in assessing whether your conduct violated our Marketplace Conduct Rules, including, but not limited to:

- Whether your intent was to induce others to trade when they otherwise would not have;
- Whether your intent was to affect a price rather than to change your position;
- Whether your intent was to create misleading market conditions;
- Market conditions in the impacted market(s) and related markets;
- The effect on other market participants;
- Your historical pattern of activity;

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placed;

- The size of your order(s) relative to your position and/or capitalization;
- The number of orders;
- Your ability to manage the risk associated with your order(s) if fully executed;
- The duration for which your order(s) was exposed to the market;
- The duration between, and frequency of, non-actionable messages;
- The queue position or priority of your order in the order book;
- The prices of preceding and succeeding bids, offers, and trades;
- The change in the best offer price, best bid price, last sale price, or other price that results from the entry of your order; and
- Your activity in related markets, including, but not limited to, the Cboe Exchange, Inc. ("Cboe"), Cboe BZX Exchange, Inc. ("BZX"), and the Cboe Futures Exchange, LLC ("CFE").

You agree and understand that if your account or any Related Account is determined, in our sole discretion, to have committed a Conduct Violation, we have the right to terminate any such accounts and take any and all necessary and appropriate actions pursuant to this User Agreement and/or Applicable Laws and Regulations.

Account Remedies for Breach

You agree and understand that if you, your account, or any Related Account is determined, in our sole discretion, to have committed a Conduct Violation, we have the right to debit from your account or any Related Account (i) the value of any trading fee discounts or rebates that you or the holder of a Related Account has received in connection with this User Agreement at any time after one year preceding the date on which we become aware of the existence of the Conduct Violation and (ii) any other damages suffered by us as a result of the Conduct Violation. We also have the right to freeze/lock/seize funds and Digital Assets in your account, or any Related Account, where such funds and Digital Assets were credited to your account, or any Related Account in reliance on your

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discretion, that you have colluded, coordinated, and/or collaborated with any other User to commit a Conduct Violation, you and that User will be jointly and severally liable for the whole value of any trading fee discounts, rebates, and/or damages to which we are entitled under this subsection and any such amounts may be debited, in our sole discretion, from your account, that User's account, or in each case, any Related Account. We will deduct any such amounts from the respective Fiat Account(s) and/or Digital Asset Account(s). If withdrawing from a Digital Asset Account, we will withdraw sufficient Digital Assets as calculated using that day's Gemini Auction® 4pm ET U.S. dollar denominated auction price or, if no such auction price is available, the Gemini trailing 24-hour U.S. dollar denominated VWAP as of 4pm ET (the "Prevailing Market Price"). In addition, you agree and understand that we may alternatively collect some or all of any such amounts by offsetting them against any amount owing to you from Gemini. If you disagree with any determination made or remedy exercised under this subsection, you may bring an arbitration action pursuant to the 'Dispute Resolution' section of this User Agreement.

Account Termination

You agree and understand that we have the right to terminate your access to Gemini and any account at any time and for any reason, including for violation of this User Agreement or applicable law, and that if we do so, your rights and obligations under this User Agreement will continue. You further agree and understand that we have the right to take any and all necessary and appropriate actions pursuant to this User Agreement and/or Applicable Laws and Regulations. If your account is terminated, we will return your funds, less the value of any trading fee discounts, rebates, debts owed to Gemini, offsets, and/or damages that we are entitled to pursuant to this User Agreement. If your account is no longer subject to an investigation, court order, or subpoena, you authorize us to return your funds (less any trading fee discounts, rebates, debts owed to Gemini, offsets, and/or damages to which we are entitled) to any bank account linked to your account, unless otherwise required by law. Subject to any rights Gemini may have against the balance of your account, if there is a Digital Asset balance remaining in your account, you agree to provide us with a Digital Asset address within seven calendar days upon receiving Written Notice, so that we can return the remaining Digital Assets to you. If you fail to do so, you hereby agree that we are permitted to sell any remaining Digital Assets on the open market at a price within 5% of the Prevailing Market Price and return the proceeds (less any trading fee discounts, rebates, and/or damages to which we are entitled) to any bank account linked to your account.

Legal Process

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execution, garnishment, tax levy, restraining order, subpoena, warrant or other legal process, which any of us reasonably and in good faith believe to be valid. We and any Gemini Service Provider may, but are not required to, notify you of such process by electronic communication. We and any Gemini Service Provider may charge you for associated costs, in addition to any legal process fees. You agree to indemnify, defend, and hold all of us harmless from all actions, claims, liabilities, losses, costs, attorney's fees, or damages associated with our compliance with any process that any of us reasonably believe in good faith to be valid. You further agree that we and any Gemini Service Provider may honor any legal process, regardless of the method or location of service.

Right of Offset

You agree and understand that we have the right to offset: (i) negative balances in your Fiat Account by selling the necessary amount of Digital Assets in your Digital Asset Account on the open market at a price within 5% of the Prevailing Market Price to offset such negative balances; (ii) negative balances in your Digital Asset Account by buying the necessary amount of Digital Assets at the Prevailing Market Price to offset such negative balances with the fiat currency in your Fiat Account; and (iii) any and all debts owed to Gemini through the offset of balances of your account or any Related Account.

Unclaimed Funds

If your account remains closed or dormant for a long enough period of time, we may be required, upon the passage of applicable time periods, to report any remaining funds in your account as unclaimed property in accordance with abandoned property and escheat laws. If this occurs, we will use reasonable efforts to give Written Notice. If you fail to respond to any such Written Notice within seven Business Days (as defined herein) or as otherwise required by law, we may be required to deliver any such funds to the applicable jurisdiction as unclaimed property. We reserve the right to deduct an administrative fee resulting from such unclaimed funds, as permitted by Applicable Law and Regulations.

BSA/AML Compliance

Our BSA/AML Program is guided by the BSA, specifically, the AML and Counter-Terrorist Financing ("CTF") provisions, as mandated by U.S. federal law, the Patriot Act, and all other relevant rules and regulations regarding AML and CTF. These standards are designed to prevent the use of Gemini for money laundering or terrorist financing activities. We take compliance very seriously and it is our policy to take all the necessary steps to prohibit fraudulent transactions, report suspicious activities, and actively engage in the prevention

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PATRIOT ACT Notification

Please also note that Section 326 of the USA PATRIOT ACT requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. This federal requirement applies to all new users. This information is used to assist the United States government in the fight against the funding of terrorism and money-laundering activities.

What this means to you: when each person opens an account on Gemini, we will ask each person for his or her name, physical address, mailing address, date of birth, and other information that will allow us to identify him or her.

Background Checks

In furtherance of our BSA/AML Program, we reserve the right to require you to provide us with additional information and/or require you to undergo a background check prior to being authorized to use Gemini, or at any point thereafter, in accordance with Applicable Laws and Regulations.

Source of Funds

You agree, represent, and warrant that all funds in your account, or funds exchanged or to be exchanged by you in the future on Gemini, are not the direct or indirect proceeds of any criminal or fraudulent activity.

You are not allowed to receive funds in your account from a sender other than yourself. Any funds you receive from a sender other than yourself will be considered unauthorized. We reserve the right to investigate the source of any funds in your account and determine, in our sole discretion, how to handle their disposition. Following our review of any funds in question and the circumstances by which you received them, we may determine that you are not the owner of such funds. If such a determination is made, we reserve the right to dispose of these funds in accordance with Applicable Laws and Regulations and in our sole discretion, which may include, returning them to the destination of their origin or to a charity of our choosing.

Sanctions Programs

Pursuant to the economic sanctions programs administered in the countries where we conduct business, including, but not limited to the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), we are prohibited from providing services or entering into relationships with certain individuals and institutions. In the event that we are required, in accordance with an OFAC sanctions program, other applicable government sanctions programs, or our policies designed to comply with these sanctions programs, we may: (i)

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Controls' section below), or (vi) require you withdraw funds from your account within a certain period of time. We are not responsible for any losses, whether direct or indirect, that you may incur as a result of our complying with Applicable Law and Regulations, the guidance or direction of any regulatory authority or government agency, or any writ of attachment, lien, levy, subpoena, warrant, or other legal order.

Prohibited Activity

Gemini does not permit the use of the platform for any prohibited activity in a Gemini account, including but not limited to: use on any dark market, ransomware, mixing service (i.e., a mixer or tumbler used to obscure the source of funds), or illegal activity that would violate, assist in violation of, or cause Gemini to violate any Applicable Laws and Regulations (as defined in the 'Applicable Laws and Regulations' section), or which would involve proceeds of any unlawful activity (collectively, "Prohibited Activity");

You agree and understand that we have the right to immediately (i) suspend your account and any related account, (ii) freeze/lock the funds and assets in all such accounts, and (iii) suspend your access to Gemini, if we suspect, in our sole discretion, any such accounts to be in violation of our Prohibited Activity policy.

Gemini Exchange

We operate an exchange ("Exchange") that facilitates the buying and selling of Digital Assets. You may use your User Account to place orders (each, an "Order") to buy and/or sell Digital Assets. When our Exchange matching engines (each, a "Matching Engine") match Orders, a trade (each, a "Trade") occurs. Unmatched Orders rest on their order book (each, an "Order Book"). Each Trade (i) transfers ownership between Users, (ii) is recorded on our internal ledger ("Exchange Ledger"), and (iii) is reflected through automatic adjustments to each User's Digital Asset Account or Fiat Account. You agree to pay all fees associated with or incurred by your use of Gemini and understand that all fees will be debited from the applicable Gemini Account and all proceeds will be credited to the applicable Gemini Account. All Exchange trading activity is "off-chain" and not broadcast to a given blockchain.

Market Data

Our Exchange generates data, including, but not limited to, pricing, volume, and other trade-related data (collectively, "Gemini Market Data"), which is publicly available via our website at [gemini.com](https://www.gemini.com) and our API here: